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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

ISAAC TOMMY FLORES,

Defendant and Appellant.

E069718

(Super.Ct.No. FWV17004045)

OPINION

APPEAL from the Superior Court of San Bernardino County. Stephan G. Saleson, Judge. Affirmed.

Lindsey M. Ball, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Julie L. Garland, Assistant Attorney General, Arlene A. Sevidal, Collette Cavalier, and Andrew Mestman, Deputy Attorneys General, for Plaintiff and Respondent.

## I

### INTRODUCTION

Defendant and appellant Isaac Tommy Flores and another man stole an ice machine from a church. Pursuant to a plea agreement, defendant pled no contest to felony grand theft (Pen. Code, § 487, subd. (a)).<sup>1</sup> Defendant also admitted that he had suffered one prior strike conviction (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)). In return, the remaining enhancement allegations were dismissed, and defendant was sentenced to two years eight months in state prison with credit for time served. Prior to sentencing, defendant moved to relieve his appointed counsel and to withdraw his plea. The trial court summarily denied defendant's requests. On appeal, defendant argues the trial court erred in denying his motion to withdraw his no contest plea and motion for substitute counsel. We find no error and affirm the judgment.

## II

### FACTUAL AND PROCEDURAL BACKGROUND<sup>2</sup>

On October 25, 2017, defendant and codefendant Andrew Delgado (Delgado) stole an ice machine valued at more than \$2,000 from a church in Chino, California. The incident was captured on video surveillance. Defendant and Delgado were arrested a few hours later after attempting to sell the ice machine online.

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<sup>1</sup> All future statutory references are to the Penal Code unless otherwise stated.

<sup>2</sup> The factual background is taken from the police report.

On October 27, 2017, defendant and Delgado were charged with one count of felony grand theft (§ 487, subd. (a)). The complaint also alleged that defendant had suffered four prior convictions for which he had previously been denied probation (§ 1203, subd. (e)(4)). The complaint further alleged that defendant had suffered two prior prison terms (§ 667.5, subd. (b)) and one prior strike conviction (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)).

On November 6, 2017, defendant's trial counsel informed the court that defendant was rejecting the People's plea offer and asked the court to confirm the preliminary hearing. Delgado's trial counsel stated that Delgado was accepting the People's plea offer but noted "it's a package." The trial court thereafter set the matter for a preliminary hearing. Subsequently, the matter was recalled, and the court noted that defendant had signed a change of plea form. The court explained that defendant would plead no contest to the grand theft charge and admit the prior strike conviction allegation in exchange for a 32-month sentence and dismissal of the remaining allegations. After the trial court informed defendant of the plea agreement, the following colloquy occurred:

"THE COURT: [ ] . . . So have I covered all the terms of your agreement, Mr. Flores?

"THE DEFENDANT FLORES: Yes.

"THE COURT: Okay. Nobody forced you to take this deal—

"THE DEFENDANT FLORES: No.

“THE COURT: —correct, sir? And both your lawyers Mr. Brown, Ms. Davis went over with each of you as to your rights, possible defenses, penalties, punishments, any possible immigration consequences, and other consequences such as the strike admission, as far as entering these pleas?

“Is that correct, Mr. Delgado?

“THE DEFENDANT DELGADO: Yes.

“THE COURT: Mr. Flores?

“THE DEFENDANT FLORES: Correct.

“THE COURT: Either of you gentlemen have any questions you want to ask the court? Mr. Delgado, anything?

“THE DEFENDANT DELGADO: No.

“THE COURT: Mr. Flores?

“THE DEFENDANT FLORES: No.

“THE COURT: And, Mr. Brown and Ms. Davis, on behalf of your respective clients you believe they understand what they need to on the change of plea and declaration forms and join in their waivers?

“For Mr. Delgado, Mr. Brown?

“MR. BROWN: Yes.

“THE COURT: And for [defendant], Ms. Davis?

“MS. DAVIS: Yes.

“THE COURT: After directly examining [defendant] and Mr. Delgado, the court will find both gentlemen have read and understand their declarations and plea forms. They both understand the charges they’re pleading to and their punishments. They understand the admissions they’re making, and they understand each of their constitutional rights.

“Court will further find Mr. Delgado and [defendant] have both knowingly, intelligently, freely and voluntarily given up their constitutional rights, and the court will allow them both to withdraw their previously entered pleas of not guilty and denials.”

Thereafter, both defendant and Delgado pled no contest to the substantive charge of felony grand theft. Both defendant and Delgado also admitted that they had suffered a prior strike conviction. In conclusion, the court reiterated, “Court will further find that Mr. Delgado and [defendant] have both personally and orally entered their pleas in open court with their counsels present at all times. Pleas and admissions were entered freely, voluntarily, knowingly and intelligently by both of them. Factual basis exists for both.” The matter was then continued for a sentencing hearing.

On December 18, 2017, at the time set for sentencing, defendant made a motion for substitute counsel pursuant to *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*). At the *Marsden* hearing, defendant indicated he wished to withdraw his plea because it was unfair that he was part of a “package deal” plea agreement with his codefendant Delgado. Defendant stated that the district attorney told his attorney that if he did not plead to the package deal before the preliminary hearing, their offer would be six years. Defendant

also indicated that, unbeknownst to his attorney, since his arrest, he had been “exploited by [his] co-defendant” who was “willing to expose [his] life to the rest of the gang to have [him] killed.” After the trial court noted that defendant never mentioned an issue at the time the court took the plea, defendant stated he got scared when his attorney told him that he was going to “end up doing six years.”

Defendant’s trial counsel indicated that defendant was misrepresenting her earlier discussion with defendant. She noted that after defendant failed to deny any involvement in the crime, and the district attorney conveyed its offer, she made two counter offers—one for a 16-month split sentence, the other for 16 months in county prison—which were denied by the district attorney. Defendant’s trial counsel also explained that after confirming the preliminary hearing, defendant indicated that he wanted to accept the offer of 32 months and that defendant was thoroughly advised of the constitutional rights he was waiving. Defendant’s trial counsel further noted that the prosecutor confirmed the offer was a package deal and that she likely informed defendant that he could not accept the offer if his codefendant did not take the offer. Additionally, defendant’s trial counsel explained that she never told defendant he was going to get six years if he did not take the plea deal, but rather, she informed defendant of the maximum sentence he faced. Defendant’s trial counsel also believed that there was no legal basis for defendant to withdraw his plea.

Defendant asserted that he felt like he was “manipulated and intimidated” to take the plea and that he agreed to the plea when his attorney told him he was ““going to end

up getting six years.’” Defendant’s trial counsel responded that defendant’s assertion of getting six years if he did not take the plea was “absolutely not true.”

The trial court concluded that there was no legal basis for defendant to withdraw his plea. After defendant again expressed his belief that he had been intimidated by his codefendant into accepting the plea, the court reiterated that there was no legal basis to withdraw the plea, noting defendant would not have obtained “as good a deal later anyway.” The court also concluded that it would not replace defendant’s lawyer. At that point, defendant repeated his claim that he had “been threatened from the beginning of time by [his] co-defendant that [he] need[ed] to keep [his] f[ ] mouth shut or [he’s] dead.” The trial court responded that it could not “do anything about that.” After defendant further stated that his due process rights were violated and that he had been “railroaded” and misinformed by his attorney, the trial court noted that it had made its ruling.

Thereafter, in accordance with the plea agreement, defendant was sentenced to 32 months in state prison with 112 days of credit for time served.

On December 21, 2017, defendant filed a notice of appeal and request for certificate of probable cause. On that same day, the trial court granted defendant’s request for certificate of probable cause.

### III

### DISCUSSION

Defendant contends the trial court abused its discretion when it summarily denied his request for a plea withdrawal hearing because it erroneously determined the coercive

efforts of the codefendant did not constitute a legal basis under section 1018 to challenge the validity of the package-deal offer. He believes that additional testimony about the extent of Delgado's purported threats was necessary for the trial court to determine whether the plea complied with the requirements of section 1018. Defendant further argues that the trial court's error deprived him of his right to be represented by counsel during all critical stages of the criminal process because the record demonstrates the relationship between defendant and his trial counsel had broken down. He therefore believes his *Marsden* motion should have been granted and that new counsel should have been appointed to effectively pursue his motion to withdraw his plea.

A. *Denial of Motion to Withdraw Plea*

Section 1018 provides, in relevant part: "Unless otherwise provided by law, every plea shall be entered or withdrawn by the defendant himself or herself in open court. . . . On application of the defendant at any time before judgment or within six months after an order granting probation is made if entry of judgment is suspended, the court may, and in case of a defendant who appeared without counsel at the time of the plea the court shall, for a good cause shown, permit the plea of guilty to be withdrawn and a plea of not guilty substituted. . . . This section shall be liberally construed to effect these objects and to promote justice." A guilty plea may be withdrawn due to mistake, ignorance or other factor overcoming the exercise of free judgment. (*People v. Cruz* (1974) 12 Cal.3d 562, 566.)



Defendant contends his plea was involuntary because it was obtained pursuant to a coercive package-deal plea bargain, defined by the Supreme Court as one in which the prosecutor offers a defendant the chance to plead guilty to a lesser charge, and receive a reduced sentence, contingent upon all codefendants pleading guilty. (*In re Ibarra* (1983) 34 Cal.3d 277, 286 (*Ibarra*)). “It has long been established that guilty pleas obtained through ‘coercion, terror, inducements, subtle or blatant threats’ are involuntary and violative of due process.” (*Id.* at p. 287.) “[A] ‘package-deal’ plea bargain is not intrinsically coercive, but may be so under the individual circumstances.” (*Id.* at pp. 283-284.) The California Supreme Court requires an inquiry into the totality of the circumstances whenever a plea is taken pursuant to a package-deal plea bargain, to determine whether there are any unduly coercive forces that might render such a plea involuntary. (*Id.* at p. 288.) The trial court must inquire into (1) whether the inducement for the plea is proper, (2) the factual basis for the plea, (3) the nature and degree of coerciveness, (4) whether the promise of leniency to a third party was a significant consideration in a defendant’s choice to plead guilty, and (5) any other factors which may be relevant (such as the defendant’s age, which party initiated plea negotiations, and whether charges had already been filed against the third party). (*Id.* at pp. 288-290.)

A trial court’s failure to make an adequate inquiry does not mandate reversal. (*Ibarra, supra*, 34 Cal.3d at p. 290 & fn. 6.) A plea cannot be set aside unless a defendant demonstrates prejudice; that is, the defendant must show that his or her guilty plea was involuntary under the standards set forth by the Supreme Court (*id.* at pp. 288-

290) “and should not have been accepted by the trial court” (*id.* at p. 290). This showing must be made whether a defendant challenges a plea on appeal or by way of a petition for a writ of habeas corpus. (*Id.* at p. 290, fn. 6.)

This court reviews a trial court’s decision refusing to allow a defendant to withdraw a guilty plea based on alleged coercion for abuse of discretion. (*People v. Sandoval* (2006) 140 Cal.App.4th 111, 123 (*Sandoval*).) “““The burden is on the defendant to present clear and convincing evidence the ends of justice would be subserved by permitting a change of plea to not guilty.” [Citation.]’ [¶] ““When a defendant is represented by counsel, the grant or denial of an application to withdraw a plea is purely within the discretion of the trial court after consideration of all factors necessary to bring about a just result. [Citations.] On appeal, the trial court’s decision will be upheld unless there is a clear showing of abuse of discretion. [Citations.]” [Citation.] “Guilty pleas resulting from a bargain should not be set aside lightly and finality of proceedings should be encouraged.” [Citation.]” (*Ibid.*)

Initially, we reject defendant’s claim that the trial court erred in denying his “request for a plea withdrawal hearing.” Although the court initially characterized the hearing as a *Marsden* hearing, the record demonstrates that the trial court addressed both the *Marsden* issue and defendant’s request to withdraw his plea. In fact, the court inquired of defendant of why he wished to withdraw his plea and excluded the prosecutor, Delgado, and Delgado’s counsel from the courtroom so defendant could

speak freely. Defendant, thereafter, in length explained to the court why he wished to withdraw his plea.

Here, the record is clear that the trial court's on-the-record inquiry into defendant's plea did not cover all the factors set forth in *Ibarra, supra*, 34 Cal.3d at pages 288-290. Nonetheless, defendant has never alleged that the inducement of the plea was improper or that the prosecutor misrepresented any facts. He did not allege that the prosecutor's case against himself or Delgado (who had already been charged) was not factually based or brought in good faith. He did not allege that the package deal's 32-month term was disproportionate to his culpability. His only allegation of coercion arises from his relationship with Delgado. He claimed that he was threatened or intimidated by Delgado into accepting the package deal and, accordingly, entered the plea to protect himself. The trial court considered the nature and extent of this alleged coercion and concluded that Delgado's alleged threats to defendant were not the overriding motivating factor in defendant's acceptance of the plea. First, the trial court (as the entity which makes credibility determinations) was not obliged to accept defendant's self-serving statements. Second, the record indicates that it was the prosecutor who had initiated the plea deal and had rejected a counteroffer made by defendant's trial counsel. Moreover, defendant's attorney had told him that his maximum sentence would be six years, plus an additional two years for the prison priors if he went to trial. Additionally, it cannot be overlooked that defendant was 36 years old at the time of the crime and not new to the criminal justice system.

Furthermore, the trial court did consider the factual basis for defendant's guilty plea. (*Ibarra, supra*, 34 Cal.3d at p. 289.) The parties agreed to the police reports as a factual basis for the plea. The police reports demonstrate that defendant was present both at the scene of the theft of the ice machine, and at the meeting place to sell the ice machine a short time later. The police reports also show that defendant's vehicle was used to commit the crime and that video surveillance footage captured defendant and Delgado committing the offense. Hence, the evidence against defendant was overwhelming.

Although we agree with defendant that the trial court did not adequately inquire into the totality of the circumstances of the package-deal plea bargain, we disagree defendant has shown he was prejudiced by the lack of inquiry, or that the trial court abused its discretion in not permitting defendant to withdraw his plea. (*Ibarra, supra*, 34 Cal.3d at p. 290 & fn. 6; *Sandoval, supra*, 140 Cal.App.4th at p. 127.) The trial court asked defendant and Delgado if each had had the opportunity to review and discuss the advisement and waiver of rights form with their attorneys, and whether they understood the rights being given up. The court also inquired of defense counsel whether they had reviewed the forms with their clients and whether they believed their clients understood the consequences of their pleas. All responses were positive. Moreover, the trial court specifically asked defendant and Delgado whether anyone "forced you to take this deal." Defendant responded, "No." Defendant also placed his initials on the plea form stating, "No one has used any force or violence or threats or menace or duress or undue influence

of any kind on me or anyone dear to me to get me to plead guilty/no contest as indicated.”

The totality of the circumstances supports the trial court’s conclusion that defendant made a rational and voluntary choice, based on his own interests with his trial counsel’s advice, not due to any alleged threats from Delgado, when he accepted the plea agreement. Given all of the factors above suggesting that defendant voluntarily took advantage of a favorable plea in light of a near certainty of a guilty jury verdict, there is no probability that, even if there had been a more comprehensive *Ibarra* inquiry that the court would have found the plea involuntary or that defendant would have changed his plea at the time. Therefore, the trial court did not abuse its discretion in denying defendant’s motion to withdraw his no-contest plea.

Contrary to defendant’s suggestion, this case is readily distinguishable from *Sandoval, supra*, 140 Cal.App.4th 111. In *Sandoval*, the prosecutor informed the trial court he had offered a package deal to four defendants accused of murder, whereby the People would agree to enter into a plea agreement only if all four defendants accepted it. (*Id.* at pp. 115-117.) Defendant Sandoval’s attorney and defendant both stated on the record that Sandoval did not want to plead guilty. (*Id.* at p. 117.) The trial judge thereafter stated that Sandoval was being “selfish” in insisting on proceeding to trial, expressed the belief “the package deal was ‘an amazing offer,’” and said the court sympathized with the three defendants who were willing to accept the plea deal but were prevented from doing so because of Sandoval’s refusal to accept the offer. (*Id.* at

pp. 118-120.) Sandoval pleaded guilty following the judge's remarks. (*Id.* at p. 120.) At an evidentiary hearing on Sandoval's subsequent motion to withdraw his plea, one of Sandoval's codefendants testified he had threatened Sandoval's life before Sandoval agreed to plead guilty. The codefendant's attorney also testified he later learned of those threats, and the defendant's attorney at the time he pleaded guilty testified the defendant had insisted on proceeding to trial the entire time she represented him until the morning he agreed to accept the plea offer. (*Id.* at pp. 121-122.) The trial court denied the defendant's motion to withdraw, but the appellate court reversed, finding there was "abundant evidence that Sandoval's guilty plea was the product of coercion." (*Id.* at p. 127.)

Unlike *Sandoval*, here the trial court did not force defendant to accept the package deal. In fact, prior to changing his plea, defendant's trial counsel noted that defendant was rejecting the People's offer and wanted to set the matter for a preliminary hearing. The trial court stated, "that's fine," and set the case for a preliminary hearing. In addition, defendant's trial counsel stated that she had confirmed a preliminary hearing and that she had informed defendant "that if he wanted to fight his case that we should go forward with the preliminary hearing." However, according to defendant's trial counsel, defendant "then again confirmed that he wanted to accept the offer." There was no evidence here that defendant's guilty plea was the product of coercion. Although defendant claimed that he had accepted the package deal because he was "manipulated," "intimidated," and threatened to take the deal, no declaration was offered to support his

claims. Moreover, the trial court accepted defendant's claims of coercion, but rejected them based on the totality of the circumstances.

Significantly, defendant has not shown his plea was involuntary under the standards set forth in *Ibarra* or that his guilty plea should not have been accepted by the trial court. (*Ibarra, supra*, 34 Cal.3d at pp. 288-290.) First, the inducement here was proper considering the evidence against both defendant and Delgado. As previously noted, evidence of defendant's and Delgado's guilt was overwhelming and captured on video surveillance. Second, the factual basis for the plea was supported by the police reports, which were agreed to by all parties, and accepted by the court. Third, as to the nature and degree of coerciveness, there is little evidence of any coercion, except defendant's self-serving statements. Defendant's reference to threats—in language implying forward-looking expectations rather than any action that had already occurred—does not amount to evidence of coercion. Certainly there was no *Sandoval*-like evidence of coercion. Finally, the other relevant factors to be considered—such as defendant's age and the party initiating the bargain—do not establish prejudice to defendant. Defendant had a significant criminal history at the age of 36. Delgado and defendant were charged jointly, and the record suggests that negotiations were initiated by the prosecutor. This record does not establish defendant's plea was involuntary. Hence, there was no violation of defendant's due process rights.

In sum, although the trial court erred by failing to conduct a more extensive inquiry pursuant to *Ibarra* in light of the package-deal plea bargain offered, defendant

was not prejudiced. We further conclude that under the particular facts of this case, the trial court did not abuse its discretion when it denied defendant's motion to withdraw his plea.

B. *Denial of Marsden Motion*

Defendant also argues that his *Marsden* motion should have been granted because he had an irreconcilable conflict with his trial counsel and new counsel was required for defendant to effectively pursue his motion to withdraw his plea. He believes that the trial court's error deprived him of his right to be represented by counsel during all critical stages of the criminal process.

“When a defendant seeks new counsel on the basis that his appointed counsel is providing inadequate representation—i.e., makes what is commonly called a *Marsden* motion ([*Marsden, supra*,] 2 Cal.3d 118)—the trial court must permit the defendant to explain the basis of his contention and to relate specific instances of inadequate performance.” (*People v. Smith* (2003) 30 Cal.4th 581, 604.) No formal motion is necessary to trigger the trial court's duty to inquire; however, the court is obligated to conduct a full *Marsden* hearing only “when there is ‘at least some clear indication by defendant,’ either personally or through his current counsel, that defendant ‘wants a substitute attorney.’ [Citation.]” (*People v. Sanchez* (2011) 53 Cal.4th 80, 89-90.) If a defendant makes a showing during a *Marsden* hearing that the right to counsel has been substantially impaired, substitute counsel must be appointed as attorney of record for all purposes, including the withdrawal motion. (*Sanchez*, at pp. 83-84; *People v. Brown*



(1986) 179 Cal.App.3d 207, 216 (*Brown*.) Conversely, if there is no showing of substantial impairment of the right to counsel, no substitute counsel should be appointed for the purpose of making a motion to withdraw defendant's plea. A criminal defendant's constitutional right to be represented by counsel at all stages of the proceedings extends to motions to withdraw a plea. (*Brown*, at p. 214.)

Here, defendant's comments were insufficient to indicate that he was requesting new counsel. Defendant did not make such a request nor did he complain about defense counsel's representation. Rather, defendant wanted to withdraw his plea and explained to the court the reasons why he wanted to withdraw his plea. Only when the trial court explained to defendant that defendant never informed the court at the time of taking of the plea that defendant did not want to take the package deal due to coercion did defendant complain about his trial counsel's representation. Indeed, the trial court noted that defendant had not "specifically asked" the court to replace his trial counsel.

In any event, the court did inquire into defendant's *Marsden* request. Defendant explained that he believed he received inadequate advice from his trial counsel when counsel stated that he would receive six years if he went to trial, that he had to take the package deal, and that his attorney did not know that he was being "exploited by" Delgado. Defendant's trial counsel explained that defendant was misrepresenting their conversation and that she had explained to defendant the maximum sentence defendant would receive if he went to trial. Defense counsel also explained that she had made two counteroffers to the prosecutor, which were denied, and that she had confirmed the

preliminary hearing. Defense counsel further clarified that after confirming the preliminary hearing, defendant wanted to accept the offer, that defendant was thoroughly advised of his rights, and that defendant was “told there’s no buyer’s remorse.”

A thorough review of the record reveals no grounds for granting a *Marsden* motion. Defendant’s trial counsel attempted to negotiate a better deal for defendant, explained to defendant that the deal likely hinged on Delgado’s plea, and conveyed the maximum punishment defendant faced. A trial court’s failure to grant a *Marsden* request will not justify reversal where a *Marsden* motion would have been baseless, such as where “complaints of counsel’s inadequacy involve tactical disagreements. [Citations.]” (*People v. Dickey* (2005) 35 Cal.4th 884, 921-922.)

Defendant argues the trial court deprived him of his constitutional right to be represented by counsel during the plea withdrawal process when the court denied his *Marsden* request to substitute counsel. Defendant relies on *Brown, supra*, 179 Cal.App.3d 207, where it was held that when a defendant requested appointment of substitute counsel after his attorney refused to represent him in a motion to withdraw his plea, “[i]t was improper to permit defendant to bring his motion in pro. per. while he was still represented by counsel and he had not waived his right to counsel. [Citation.]” (*Id.* at pp. 214-215.) *Brown* is distinguishable on its facts. Here, unlike in *Brown*, defendant did not ask for new counsel to bring a motion to withdraw his plea, and defense counsel did not refuse to bring a motion. Instead, the trial court inferred from defendant’s complaints that he wished to withdraw his plea, and defense counsel opined

that there was no legal basis to grant defendant's request to withdraw his plea. *Brown* instructs that a *Marsden* hearing is required when the basis of a withdrawal motion is ineffective assistance of counsel. In accordance with *Brown*, the trial court in this case properly determined there were no grounds for finding ineffective assistance of counsel based on defense counsel's advice to defendant about his guilty plea, and therefore no grounds to appoint new counsel to bring a withdrawal motion.

We further note that the *Brown* court did not hold that reversal is automatic whenever defense counsel refuses to present a motion to withdraw the defendant's plea. The appellate court reversed the judgment because the trial court failed to conduct a *Marsden* hearing when the defendant requested substitute counsel. (*Brown, supra*, 179 Cal.App.3d at p. 216.) Further, the court acknowledged that counsel could not be required to make a motion "which, in counsel's good faith opinion, is frivolous or when to do so would compromise accepted ethical standards. [Citation.]" (*Ibid.*) Further, even upon request, new counsel should not be appointed to bring a motion to withdraw a plea, unless the defendant shows that there were arguable or nonfrivolous grounds for the motion. (See *People v. Smith* (1993) 6 Cal.4th 684, 688-691, 695-696.)

When a defendant asks the court to change his plea, without seeking substitute counsel, it is appropriate for the court to question him regarding the grounds for the motion, and to review the record of the plea and the defendant's understanding of his rights and the consequences of the plea. (See *People v. Mesa* (1985) 174 Cal.App.3d 58, 59-60 [defendant orally moved to withdraw guilty plea on ground he was not guilty].) If

the court determines that no legal grounds exist, it does not err in finding that counsel's failure or refusal to file a motion was not improper. (*Id.* at pp. 60-62.) Further, where the record supports the trial court's conclusion that defendant's waivers were valid and his plea was entered freely, voluntarily, and with an understanding of the consequences, defendant has not been prejudiced. (*Id.* at pp. 61-62.) We distill from these authorities that the court does not err in failing to appoint new counsel to present a motion for change of plea where, as here, the record indicates no good cause for withdrawal of the plea, and defendant did not move to substitute counsel, but instead merely stated facts from which the trial court inferred a desire to withdraw the plea.

As previously noted, the court's determination that the defendant failed to articulate legal grounds to withdraw his plea is reviewed for an abuse of discretion. (See *People v. Smith, supra*, 6 Cal.4th at pp. 688-691, 695-696.) On appeal, it is always the defendant's burden to demonstrate an abuse of discretion and a resulting miscarriage of justice. (See *Denham v. Superior Court* (1970) 2 Cal.3d 557, 566.) To demonstrate a miscarriage of justice, defendant must show that a different result was reasonably probable absent the alleged error. (See *People v. Watson* (1956) 46 Cal.2d 818, 836.) Defendant makes no attempt to do so here, rather he argues that the court's procedure was presumptively prejudicial because it amounted to a denial of assistance of counsel. We have already concluded to the contrary.

We recognize that defendant contends he was forced into arguing his own withdrawal motion without proper representation. However, the trial court heard the

motion and the motion would have failed based on ineffective assistance of counsel. Defense counsel had no obligation to make a frivolous motion to withdraw a guilty plea. (*People v. Brown* (2009) 175 Cal.App.4th 1469, 1472-1473; *People v. Smith, supra*, 6 Cal.4th at p. 695.) Defendant has not met his burden to demonstrate a reasonable probability of a different result had he, his attorney, or substitute counsel presented a written motion to change his plea. In light of the high standard of proof that defendant would face to show good cause, we conclude beyond a reasonable doubt that there was no such probability.

#### IV

#### DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON  
J.

We concur:

MILLER  
Acting P. J.

SLOUGH  
J.